

APPEAL NO. 040503
FILED APRIL 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 24, 2004. The hearing officer resolved the disputed issue by determining that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter. The appellant (carrier) appeals this determination. The respondent (claimant) urges affirmance of the hearing officer's decision.

DECISION

Affirmed on other grounds.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), upon which the hearing officer based his entitlement determination, states that the "good faith" criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The carrier argues that the claimant did not satisfy the requirements of Rule 130.102(d)(4) because there are other records in evidence showing that she had an ability to work. We agree. While the hearing officer noted that there was medical evidence indicating that the claimant could return to work in a sedentary capacity, he failed to take this into consideration when he determined that the claimant satisfied the requirements for SIBs entitlement based on a no-ability-to-work theory. The evidence reflects that at the time of the compensable injury, the claimant's job required physical strength greater than a sedentary capacity. The evidence also reflects that during the qualifying period corresponding to the 11th quarter, the claimant entered into an Individualized Plan for Employment (IPE) with the Texas Rehabilitation Commission (TRC) in order to obtain vocational retraining enabling her to find employment in a sedentary capacity. The claimant testified that in accordance with her IPE, she met with the TRC counselor to explore vocational opportunities during the qualifying period.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational

rehabilitation program sponsored by the TRC during the qualifying period. Rule 130.101(8) defines the phrase "full time vocational rehabilitation program" as follows:

Any program, provided by the [TRC] . . . for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

The hearing officer noted that the claimant did not satisfy the requirements of Rule 130.102(d)(2) because her IPE was not signed. However, no one disputed the authenticity of the document, and on the line indicating "Client Signature," the TRC has typed in the claimant's name as well as the date on which she agreed to the IPE. This appears to be the TRC's general procedure with regard to "signing" the IPEs. Consequently, the fact that an IPE does not bear a handwritten signature does not, in and of itself, affect the validity of the agreement. As the evidence reflects that the claimant was enrolled in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period and she was complying with her responsibilities outlined therein, the claimant satisfied the good faith requirement for SIBs entitlement for the 11th quarter and, consequently, we can affirm the hearing officers' decision on other grounds. See Daylin, Inc. v. Juarez, 766 S.W.2d 347, 352 (Tex. App.-El Paso 1989, writ denied).

The hearing officer's decision that the claimant is entitled to 11th quarter SIBs is affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
THE STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge